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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,949	05/01/2002	Guy Couaraze	03715.0105	8770

21839 7590 12/23/2003

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EXAMINER

WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 2/4/03

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 8 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-13 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 1-4, 11, 12 is/are rejected.
☒ Claim(s) 5-10, 13 is/are objected to.
☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 1
☐ Interview Summary, PTO-413
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Claims 5-10, 13 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 5-10, 13 have not been further treated on the merits.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by EPA 361874.

EPA '874 teaches a core granule coated with a dispersion containing a drug (abstract). Nonpareils comprising sucrose are specified (page 2 line 53), 12-32 mesh is specified (page 3 lines 56-58). Tablets are disclosed (page 4 line 6).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over EPA '874 in view of Gianini et al.

EPA '874 is discussed above. Gianini et al teach smaller seed size for larger doses (column 4 line 32-column 5 line 2), varying the amount of active for the desired potency is disclosed (column 7 lines 37-46).

It would have been obvious to reduce the nonparfil size of EPA '874 to achieve the beneficial effect of larger doses in view of Gianini et al. As to the claimed amount of coating, Gianini teaches varying the amount of coat for the beneficial effect of obtaining the desired potency. As to the particular percent coat and nonparfil size, such may be obtained by routine experimentation. No criticality has been disclosed. In re Boesch 205 USPQ 215 (CCPA 1980).

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2 "Preferably" renders the claim vague; it is unclear as to which range is claimed.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 308-4432. The examiner can normally be reached on Monday-Friday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1234.

Webman/tgd
December 4, 2003

EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500